

12-3223-cv

Thomas Barrett, Daffin, Frappier, Turner & Engel LLP

MANDATE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of September, two thousand thirteen.

PRESENT:

JOHN M. WALKER, JR.,
DEBRA ANN LIVINGSTON,
DENNY CHIN,

Circuit Judges.

ELIZABETH THOMAS,

Plaintiff-Appellant,

v.

No. 12-3223-cv

BARRETT, DAFFIN, FRAPPIER, TURNER & ENGEL
LLP, FKA BARRETT, BARRETT, BURKE, WILSON,
CASTLE, DAFFIN & FRAPPIER, LLP, *et al.*,

Defendants-Appellees,

NDEX WEST LLC, *et al.*,

Defendants.

MANDATE ISSUED ON 10/10/2013

1 Elizabeth Thomas, *pro se*, Tomball, Texas, on
2 submission, for Plaintiff-Appellant.

3
4 Jeffrey G. Stark, Forchelli, Curto, Deegan,
5 Schwartz, Mineo, Cohn & Terrana, LLP,
6 Uniondale, New York, and Melissa J. Armstrong,
7 Baker Botts LLP, New York, New York, on
8 submission, for Defendants-Appellees.

9 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
10 **DECREED** that the orders of the District Court (Gleeson, J.) are **AFFIRMED**.

11 Appellant Elizabeth Thomas, proceeding *pro se*, appeals from the district court's
12 order dismissing her claims against Appellee Barrett, Daffin, Frappier, Turner & Engel LLP
13 (the "Barrett firm") for lack of personal jurisdiction and dismissing her claims against
14 Appellees The Dolan Company and American Processing Company, and defendant NdeX
15 West, LLC (the "Dolan companies"), based upon judicial estoppel. She further appeals
16 from the district court's order denying reconsideration of these decisions and denying her
17 motion to transfer her case to the Southern District of Texas. We assume the parties'
18 familiarity with the underlying facts, the procedural history of the case, and the issues on
19 appeal.

20 The issue of standing is a threshold jurisdictional issue, which a federal court must
21 entertain before reaching the merits of the case. *Ross ex rel. Dunham v. Lantz*, 408 F.3d 121,
22 123 (2d Cir. 2005) (per curiam). Federal courts must examine the issue of standing whether
23 or not it is raised by the court below or the parties. *Juidice v. Vail*, 430 U.S. 327, 331 (1977).

1 This is because a federal court considering a matter that is not a case or controversy, and
2 therefore not delegated to the federal judiciary under Article III, would “violate principles
3 of separation of powers.” *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110,
4 116 (2d Cir. 2002).

5 Under 11 U.S.C. § 541(a)(1), the commencement of a bankruptcy case creates an
6 estate comprised of “all legal or equitable interests of the debtor in property as of the
7 commencement of the case.” The bankruptcy estate includes future, nonpossessory,
8 contingent, speculative, and derivative interests, along with all causes of action “owned by
9 the debtor or arising from property of the estate.” *Chartschlaa v. Nationwide Mut. Ins. Co.*,
10 538 F.3d 116, 122 (2d Cir. 2008). Property acquired after the filing of a bankruptcy petition,
11 although normally not part of the estate, will vest in the estate if it is derived from property
12 that was part of the estate as of the commencement of the bankruptcy. *See id.* (citing 11
13 U.S.C. § 541(a)(6)). Where legal claims become part of a bankruptcy estate, the debtor lacks
14 standing to bring these claims, in the absence of circumstances not present here. *See id.* at
15 123.

16 Although the district court dismissed Appellant’s claims against the Dolan
17 companies because she had failed to disclose them in a bankruptcy action and was
18 therefore judicially estopped from pursuing them, it noted in passing that dismissal of
19 these claims was also appropriate because Appellant lacked standing, as the claims were

1 properly part of the bankruptcy estate. We conclude that the district court did not err in
2 determining that Appellant's claims against the Dolan companies vested in the bankruptcy
3 estate because they were derived from property that was part of the estate. As a result,
4 Appellant lacks standing with respect to her claims against the Dolan companies, and we
5 affirm the district court's dismissal of these claims for this reason.

6 Additionally, although the district court dismissed Appellant's claims against the
7 Barrett firm for lack of personal jurisdiction, it later noted that Appellant would also be
8 judicially estopped from pursuing these claims for substantially the same reasons that she
9 was estopped from pursuing her claims against the Dolan companies. We agree, and the
10 same facts that support this finding demonstrate that Appellant lacked standing to pursue
11 these claims as well. As a result, we affirm the district court's dismissal of the claims
12 against the Barrett firm, and we similarly affirm the district court's rejection of the
13 arguments in Thomas's motion to reconsider or transfer.

14 We have considered all of Appellant's remaining arguments and find them to be
15 without merit. Accordingly, we **AFFIRM** the orders of the district court.

16
17 FOR THE COURT:
18 Catherine O'Hagan Wolfe, Clerk
19




A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


